BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

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| In the matter of the amendment of ARM 2.59.1401, 2.59.1402, 2.59.1405, 2.59.1406, 2.59.1409, 2.59.1410, 2.59.1413, 2.59.1414, and 2.59.1417 pertaining to the regulation of title lenders and the adoption of NEW RULES I through IX regarding title loan designation, notification to the department, rescinded loans, failure to correct deficiencies, department's cost of administrative action, examination fees, required record keeping, sale of repossessed property, and unfair practice | ) | NOTICE OF AMENDMENT AND ADOPTION |

TO: All Concerned Persons

1. On May 8, 2008, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-400 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 846 of the 2008 Montana Administrative Register, issue number 9.

2. On May 29, 2008, a public hearing was held in Helena concerning the proposed amendment and adoption. Two people testified. Four people submitted written comments.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments and testimony received and the department's responses are as follows:

Comment #1: Todd Koutts of Advance Finance of Missoula commented that in the statement of reasonable necessity for ARM 2.59.1414(1)(e) it was unclear if the department was giving an example or if the department was saying that lenders may not charge storage and repossession costs for in-state collections but may charge such fees for out-of-state collections. Mark Staples commented on behalf of Montana Title Loans. He quoted this statement of reasonable necessity, "In addition, lenders may not charge storage and repossession costs in all cases; for instance, they may not charge storage and repossession costs for in-state repossessions but they may charge such costs for out-of-state repossessions. If the lender would ever charge the costs, under any circumstances, the lender should disclose that fact to the applicant. The mandatory language "shall" is being changed to "may" to reflect that the costs must be disclosed even if they may only be charged under certain circumstances." Mr. Staples questioned where in the rules or statutes such language exists. He submits that a policy of allowing out-of-state costs while

disallowing in-state costs does not adequately take into account the geography of Montana.

Response #1: The department was giving an example. There is nothing in the Title Loan Act that addresses when a title lender may or may not charge storage and repossession costs. However, if the title lender chooses to charge costs under any circumstances, those costs should be disclosed to the applicant.

Comment #2: Aimee Grmoljez representing Select Management asked what to do about a customer that wants to "cure" a default. For instance if a customer who has defaulted comes in ten days after the default, can the lender allow the customer to "cure" the default and reinstate the loan and backdate documents to make the loan continue on in effect as if no default had occurred? Tiki Hut Title Loan in Billings commented that by not allowing the borrower to reinstate a loan that has gone into default, the division has relegated the borrower to either paying in full or losing the vehicle. Tiki Hut proposes that the lender have the ability to reinstate a loan that has gone into default.

Response #2: There is nothing in the Title Loan Act that allows the lender to allow the borrower to "cure" a default. Section 31-1-816(2)(f)(i), MCA, states, "upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement;" and 31-1-816(2)(h), MCA, states, "upon taking possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the [20-day waiting period] provided for in 31-1-820, MCA."

The department cannot change statutes by administrative rule in accordance with 2-4-305(6), MCA. Nor can the department create a new remedy on default that does not exist in statute by adopting an administrative rule. The department advised Select Management and Tiki Hut that they may address this concern to the next legislative session.

Comment #3: Tiki Hut Title Loan in Billings commented that they agree that making it mandatory for all owners of the vehicle to be present to receive a loan on a vehicle will eliminate the risk that one owner will get a loan without the knowledge of all other owners. That requirement should eliminate the need to send documents and notices to both parties, since they should have the burden to communicate between them.

Response #3: By defining "borrower" to include all owners of a jointly-owned vehicle, the "borrower" would have to sign the title loan agreement, consent to the title lender keeping the certificate of title, have the right to redeem the certificate of title by repaying the loan in full, have the right to rescind the transaction, deliver the titled property to the title lender if a default occurs, as well as receive notice of the

right of redemption. The proposed rules do not say that the borrower(s) must be "present" to receive a loan on a vehicle.

Comment #4: Tiki Hut Title Loan in Billings commented that ARM 2.59.1409 prohibits the lender from putting a customer into repossession if the lender comes across information that makes them positive that the customer will not repay the loan. Tiki Hut thinks it would be beneficial to have the option to call the loan due at any time and not have to wait until the end of the renewal period.

Response #4: The Title Loan Act requires each title loan to have a term of 30 days and allows renewals for additional 30-day periods pursuant to 31-1-816, MCA. The department cannot by administrative rule change the statutes, nor can it provide remedies that conflict with the statutes in accordance with 2-4-305(6), MCA.

Comment #5: Tiki Hut Title Loan of Billings commented that the new rules will require the lender to suspend interest when a title loan goes into default. They question whether banks are required to suspend interest when a loan goes into default. They state it is not reasonable for the borrower to have no repercussion for defaulting on the contract. Tiki Hut states that it would lead to the customer being unchecked until they decide to return the vehicle or pay the loan off with only 60 days of interest accrued. Tiki Hut proposes that the lender be able to continue to renew the loan and accrue interest, regardless of the fact the loan is in default, until the borrower pays or the vehicle is repossessed. In addition, the borrower would be able to reinstate the loan if the loan were in default status until the vehicle is repossessed.

Response #5: The proposed amendments to the rules do require the lender to stop charging interest when a loan goes into default because 31-1-817, MCA, provides the maximum rate of interest that a title lender may contract for and receive in making and carrying any title loan authorized under the Title Loan Act. Those rates are set by loan amount for each 30-day period. If the lender were to continue to charge interest during the 20-day redemption period and beyond, the lender would be exceeding the maximum rate set forth by statute.

Banks are not required to stop charging interest on loans in default, but they are not making title loans pursuant to the Title Loan Act. If they were, they would be bound by the Title Loan Act and the rules adopted thereunder.

Borrowers have the repercussions for defaulting on the contract that are set forth in the Title Loan Act. Namely, the borrower must pay off the loan in full within the redemption period or surrender the vehicle for repossession and sale.

The department is proposing to limit interest to the period of the title loan. New Rule IX states it is an unfair practice to renew a title loan if the borrower has not paid toward either principal or interest for 60 days. This is designed to prevent the lender from renewing a title loan until it cannot be renewed any longer when it is clear a borrower cannot repay the loan. If the borrower cannot repay the loan, it is not fair

to continue to renew the loan to strip what equity remains in the titled personal property. The department believes that if the borrower cannot repay, then reasonably prompt repossession and sale will at least return what equity remains in the titled personal property to the borrower.

Comment #6: Tiki Hut Title Loan of Billings commented that New Rule IX states that the borrower is not to be charged interest after not making payments for 60 days and that the collateral is to be repossessed or surrendered by the borrower. Tiki Hut commented that this does not leave room for the discretion of the lender to work with the borrower to get the default worked out. Tiki Hut proposes a scenario in which the lender can renew the borrower until they decide the borrower is in default and would not return the collateral to them. Both the rules give the borrower two poor options for dealing with the situation, either pay off the loan or surrender the vehicle. The proposed rule only limits the customer's ability to work with the lender and get caught up and keep the vehicle.

Response #6: New Rule IX states, "[i]t is an unfair practice to renew a title loan if the borrower has failed to make a payment toward either principal or interest for 60 days." An amendment to ARM 2.59.1409 states that a licensee may not continue to accrue interest after the expiration of a title loan agreement, period of renewal, or after the redemption date of the loan. Together, those two provisions mean that if a borrower has failed to make any payment toward either principal or interest for 60 days, the loan must be placed into default and the lender cannot continue to charge interest on the loan. The rules do not limit the ability of the borrower to work with the lender to get caught up on a loan after default; the Title Loan Act does.

Comment #7: Tiki Hut Title Loan of Billings commented that the amendment to ARM 2.59.1409(11)(a) and (b) does not address what position fees are paid in. They suggest that fees should be paid after interest but before principal.

Response #7: The proposed amendment addresses the application of payments to principal and interest. Typically, fees are taken off the top of the payment. But in order to clarify this issue, the amendment will be redrafted to address the application of payments to fees, principal, and interest.

Comment #8: Mike Sopuch of Cash King, LTD asked if someone doesn't come in to pay the title loan, but the title lender does not wish to initiate repossession because they don't want to keep the vehicle for the required 20-day holding period, does this imply that that they will not be able to charge interest for the 20-day holding period?

Response #8: Yes.

Comment #9: Mike Sopuch of Cash King, LTD commented that it would be mutually beneficial if the lender could mail a statement to the borrower that they are in default and they would be charged interest until they pay off the loan or deliver the vehicle.

Response #9: The Title Loan Act sets the maximum rate of interest that can be charged for making and carrying a title loan. Section 31-1-817, MCA, sets forth the interest rate for each 30-day period based on the amount of the loan. It does not allow interest to continue past the term of the loan.

Comment #10: Mike Sopuch of Cash King, LTD commented that if they repossess the vehicle on the first default date in order to mitigate their interest loss, and the borrower comes in to pay 10 days later and says that the lender burned up their transmission, the lender has a problem. If they can't collect interest for 20 days and allow the borrower to drive a car in which they have a security interest "interest free" then they have another problem.

Response #10: Anytime a lender repossesses titled personal property, the borrower can claim that the property was damaged by the lender during the repossession. Section 31-1-822, MCA, provides that the title lender is strictly liable to the borrower for any loss to pledged property in the possession of the title lender but only if the borrower makes a redemption of the pledged property prior to the expiration of the 20-day holding period. The lender would not be allowed to charge interest during the 20-day redemption period.

Comment #11: Mark Staples representing Montana Title Loans stated, with the exception of comment #1, Montana Title Loans supports all current proposals as complimentary to a well-regulated title-lending sector of the Montana financial services industry.

Response #11: The department thanks Montana Title Loans for its comments.

Comment #12: John McCloskey of Select Management Resources, LLC, commented that he believes the division lacks the authority to prohibit the accrual of post-default interest on title loans. He believes the division's authority is the same as that under the Consumer Loan Act. He contends that if interest ceases on a title loan, then the same theory would compel the cessation of interest under the Consumer Loan Act.

Response #12: The department disagrees. The Title Loan Act specifically limits the maximum allowable interest to 30-day periods pursuant to 31-1-817, MCA. The Consumer Loan Act contains no such limitation.

Comment #13: John McCloskey of Select Management Resources, LLC, asked the following: Assume a customer takes out a $400 loan on June 1 with a due date of June 30. On July 1, no payment is made but the lender automatically renews the loan. New due date is July 30. On July 30 no payment is made. Proposed New Rule IX prohibits a second automatic renewal so no new renewal notice is sent. Interest ceases and the customer is in default. On August 10, the customer comes into the title lender. What are the customer's options?

Response #13: The customer can deliver the titled personal property to the lender or pay the redemption amount pursuant to 31-1-816, MCA.

Comment #14: John McCloskey of Select Management Resources, LLC, suggests that the division rewrite ARM 2.59.1409 to provide that the renewal notice required by (3) only needs to be mailed if the customer does not come in to make their payment within five days of the due date as was the practice several years ago. The five-day delay allows time to see if the customer will come in to make a payment. A five-day delay simply makes sense.

Response #14: Section 31-1-816, MCA, provides that a title loan has a term of 30 days. The borrower has the exclusive right to redeem the certificate of title by repaying the loan in full and by complying with the title loan agreement for an agreed period of time. Upon the failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement or at the end of any agreed upon 30-day renewal, the borrower shall deliver the titled personal property to the title lender pursuant to 31-1-816, MCA. The department may not adopt administrative rules that conflict with the statute in accordance with 2-4-305(6), MCA.

Comment #15: John McCloskey of Select Management Resources, LLC, commented that the division is promulgating a rule that is contrary to the Act by prohibiting a second automatic renewal.

Response #15: Section 31-1-816(2)(d)(i), MCA, provides that, "the title loan may be renewed for additional 30-day periods beyond the original term provided that beginning with the sixth renewal, and for each subsequent renewal, the borrower shall reduce the principal amount by at least 10% of the original principal amount of the loan." The Act gives no guidance as to what the requirements for a renewal may be, or how the renewal is to be accomplished. Presumably, the borrower cannot pay the full redemption amount or a renewal would not be necessary.

However, the Act also prohibits unfair, deceptive, or fraudulent practices in the making or collection of a title loan under 31-1-825(1)(j), MCA. If a borrower has not made any payment toward principal or interest for 60 days, it is clear that they cannot pay the redemption amount either. If the borrower cannot afford to pay anything toward principal or interest for 60 days, the loan should be placed into default. Failure to do so will result in stripping the equity from the titled personal property. The end result of either scenario is that the borrower will lose the titled personal property because the borrower cannot afford to repay the loan. The only issue is whether the borrower will also lose the equity in the titled personal property. As a matter of fairness, the department believes that the borrower who clearly cannot repay the loan should be put into default and any equity remaining in the titled personal property over the amounts owed should be returned to the borrower.

Comment #16: John McCloskey of Select Management Resources, LLC, commented that in comment 13, the customer should have the same right to cure their default on August 10 as they did on July 10 (by paying two months worth of

interest). No customer should ever be forced to surrender their vehicle because they cannot pay their loan in full at a specific point in time when they want and the lender is willing to give additional time. The Montana Title Loan Act specifically authorizes renewals to accommodate borrowers needing more time. Depriving the borrower of the ability to cure their default is very harmful to them and contrary to the intent of the Act. The current language of proposed New Rule IX could be interpreted as prohibiting this right as the borrower has "failed to make a payment" for 60 days. For this reason, he proposes that New Rule IX be revised to read:

"It is an unfair practice to renew a title loan if the borrower has failed to make a payment toward either principal or interest for 60 days. Provided however after 60 days of no payment a borrower can be given the option of curing their default by paying past due interest and principal and thereafter renewing their loan."

Response #16: The Title Loan Act does not allow a borrower to "cure" their default in any manner other than the right of redemption allowed in 31-1-820, MCA. The Title Loan Act provides that the borrower is entitled to redeem the certificate of title upon timely satisfaction of all outstanding obligations agreed to in the title loan agreement. If the borrower fails to redeem the certificate of title before the lapse of the 20-day holding period, they forfeit all right, title, and interest in the pledged property pursuant to 31-1-820, MCA. The department cannot adopt a rule that conflicts with the statute in accordance with 2-4-305(6), MCA.

Comment #17: John McCloskey of Select Management Resources, LLC, commented that the amendment to ARM 2.59.1410 contains a technical error. The amendment deletes section (1) but keeps section (2) which refers to section (1).

Response #17: The department concurs and thanks Mr. McCloskey for bringing this matter to its attention. The amendment will be redrafted to address this problem.

4. The department has amended ARM 2.59.1409 which assumes no payment will be made for six renewals. In addition, the word "automatic" will be removed from the rules since the statute contains no reference to "automatic" renewals.

5. The department has amended ARM 2.59.1401, 2.59.1402, 2.59.1405, 2.59.1406, 2.59.1413, 2.59.1414, and 2.59.1417 exactly as proposed and adopted New Rule I (2.59.1403), New Rule II (2.59.1404), New Rule III (2.59.1407), New Rule IV (2.59.1408), New Rule V (2.59.1411), New Rule VI (2.59.1412), New Rule VII (2.59.1415), New Rule VIII (2.59.1418), and New Rule IX (2.59.1419) exactly as proposed.

6. The department has amended ARM 2.59.1409 and 2.59.1410 with the following changes, stricken matter interlined, new matter underlined:

2.59.1409 DURATION OF LOANS – INTEREST

(1) remains as proposed.

(2) The loan agreement may provide for ~~automatic~~ 30-day renewal periods beyond the original term if principal and interest are not paid in full on the maturity date. Any ~~automatic~~ 30-day renewal period must be clearly stated on the face of the loan agreement in bold, capital letters. In addition to any other disclosures that may be required by law, licensees must provide the borrower, in the original title loan agreement or by addendum, a statement of the principal and interest which would be due over a six-month period if the borrower fails to make any payments as set forth in Illustration A. This chart is illustrative only. A borrower must make a payment toward the principal or interest every 60 days. However, for the sake of illustration, this chart assumes no such payment is made. If the borrower does not make a payment toward principal or interest within 60 days, the loan is placed into default. Such statement must be initialed by the borrower at the time of the original loan and include the borrower's affirmation that the borrower has been shown and read the statement.

Illustration A

| | Principal | Interest Per Month at 25% | Accrued Interest at 25% | Total Amount Due |
|---|---|---|---|---|
| Original Loan | $500.00 | $125.00 | $125.00 | $625.00 |
| Renewal 1 | $500.00 | $125.00 | $250.00 | $750.00 |
| Renewal 2 | $500.00 | $125.00 | $375.00 | $875.00 |
| Renewal 3 | $500.00 | $125.00 | $500.00 | $1,000.00 |
| Renewal 4 | $500.00 | $125.00 | $625.00 | $1,125.00 |
| Renewal 5 | $500.00 | $125.00 | $750.00 | $1,250.00 |

(3) through (10) remain as proposed.

(11) Licensees shall apply payments to fees, interest, and principal in the following order:

(a) first, to accrued ~~interest~~ fees; ~~and~~

(b) then, to ~~principal~~ interest~~.~~; and

(c) then, to principal.

2.59.1410 RENEWALS - REDUCTION OF PRINCIPAL

(1) In the event that a borrower fails to reduce the principal and interest as required in ~~(1)~~ 31-1-816, MCA, a licensee at its option may either:

(a) through (2) remain as proposed.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State July 21, 2008.